

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CHERYL BURGARD, on behalf of herself and  
others similarly situated,

Plaintiff,

-against-

INTERNATIONAL BUSINESS MACHINES  
CORPORATION,

Defendant.

**ORDER**

24-CV-02885 (PMH)

PHILIP M. HALPERN, United States District Judge:

Plaintiff Cheryl Burgard, on behalf of herself and others similarly situated, commenced this action on April 16, 2024 against International Business Machines Corporation. Since Plaintiff commenced this action, eight other former or current IBM Executive Assistants have also opted into this action. (Docs. 9, 11, 17, 20, 34).

On April 4, 2025, the parties filed a joint letter regarding an ongoing discovery dispute. (Doc. 67). Defendant argues that certain opt-in Plaintiffs—MaryBeth Acocella, Bernadette Ocampos Romero, and Ellen Rosner (“Opt-in Plaintiffs”)—have failed to sit for a deposition and provide documents responsive to their demands for production. (*Id.* at 1). Specifically, Defendant argues that these Opt-in Plaintiffs have “ignored IBM’s requests for deposition availability for over three months, failed to verify their interrogatories for over five months, and failed to produce any documents whatsoever.” (*Id.* at 3). Plaintiffs, in response, do not dispute that the Opt-in Plaintiffs have: (i) failed to provide deposition dates, (ii) failed to verify their interrogatories; and (iii) failed to produce any documents. (*Id.* at 3-5). Fact discovery ends in this action on April 15, 2025. (Doc. 59).

The Court waives any pre-motion conference requirement and exercises its discretion to deem the parties’ letter as a motion for sanctions under Federal Rules of Civil Procedure 37 and 41 and opposition thereto. *See In re Best Payphones, Inc.*, 450 F. App’x 8, 15 (2d Cir. 2011); *see*

*also Brown v. New York*, 2022 WL 221343, at \*2 (2d Cir. Jan. 26, 2022). The Court has reviewed the parties' submissions, and GRANTS Defendant's motion.

Accordingly, the Opt-in Plaintiffs shall, by no later than April 15, 2025: (i) respond to Defendant's discovery demands, including serving interrogatory verifications and producing any responsive, non-privileged documents; and (ii) appear for depositions at a mutually agreeable date(s) and times.

Failure to strictly comply with this Order will result in dismissal of the Opt-in Plaintiffs' Fair Labor Standards Act claims in this action with prejudice.

The Clerk of Court is respectfully requested to terminate the pending letter-motion (Doc. 67).

SO ORDERED.

Dated: White Plains, New York  
April 7, 2025

A handwritten signature in black ink, appearing to read 'Philip M. Halpern', written over a horizontal line.

PHILIP M. HALPERN  
United States District Judge